



113, Knoxville, Tennessee 37912, and for which H R Solutions of America, LLC retained the right to hire, fire, discipline and assign the Plaintiffs, and for which H R Solutions of America, LLC assumed responsibility for paying wages to the Plaintiffs including all applicable income tax withholding and maintaining workers' compensation insurance for the Plaintiffs. H R Solutions of America, LLC was responsible for and agreed to comply with the Fair Labor Standards Act (FLSA), and Section I 324A(b) of the Immigration Reform and Control Act of 1986.

Because the Plaintiffs were employees of H R Solutions of America, LLC, a Tennessee Corporation with its principal office at 906 Callahan Drive, Suite 113, Knoxville, Tennessee 37912, and because H R Solutions of America, LLC retained the right to hire, fire, discipline and assign the Plaintiffs to their various work positions, the proper party to the above described litigation for the period of time as recited should be H R Solutions of America, LLC.

The Defendant, Baird Tree Company, Inc., has moved to dismiss the Plaintiffs' Complaint pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure.

### **ARGUMENT AND AUTHORITY**

Pursuant to Rule 12(b)(7), a party may assert the defense of failure to join a party under Rule 19 of the Federal Rules of Civil Procedure. Additionally, Rule 19 of the Federal Rules of Civil Procedure provides that a person who is subject to service of process and whose joinder will not deny the Court of subject-jurisdiction must be joined as a party if: (A) in that persons absence, the Court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.

Pursuant to Rule 19(a)(2) of the Federal Rules of Civil Procedure, if a person has not been joined as required, the Court must order that person be made a party.

In the instant case, the Plaintiffs have failed to state any reasons for not joining H R Solutions of America, LLC as the proper Defendant, when in fact, the Plaintiffs were employees of H R Solutions of America, LLC beginning May 1, 2009 through the Spring of 2010.

WHEREFORE the Defendant would request this Court to dismiss Baird Tree Company, Inc. as a Defendant as requested and/or to otherwise Order the Plaintiffs to otherwise join H R Solutions of America, LLC as their employer under the terms of the Fair Labor Standards Act (FLSA).

Respectfully submitted this 14th day of September, 2010.

BAIRD TREE COMPANY, INC.

s/David H. Dunaway  
David H. Dunaway, BPR #0491  
David H. Dunaway and Associates  
Counsel for Defendant  
100 S. Fifth Street  
P.O. Box 280  
LaFollette, Tennessee 37766  
LaFollette: (423) 562-7085  
Knoxville: (865) 524-3670

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

This 14th day of September, 2010.

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s/David H. Dunaway  
David H. Dunaway  
Attorney for Defendant